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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

COMMENTS OF NEW WORLD COMMUNICATIONS GROUP INCORPORATED

NEW WORLD COMMUNICATIONS GROUP INCORPORATED

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SUMMARY

New World Communications Group Incorporated ("New World"), an owner of 12 television broadcast stations, supports the Commission's initiative to reexamine and liberalize the television broadcast multiple ownership rules. New World submits that since the last major change to these rules in 1984, the television/video marketplace has grown substantially more competitive. Therefore, the existing multiple ownership restrictions actually inhibit rather than promote viewpoint diversity.

Specifically New World supports the Commission's proposal to eliminate the numerical station limit and relax the aggregate audience reach cap. Given the dramatic changes in the program distribution and production markets since these rules were last reviewed, the Commission should adopt an initial change to increase the audience reach cap to at least 50% rather than to adopt several incremental increases to the cap over a period of years. Increasing the penetration cap to this level will enable multiple new broadcasters to achieve the scale necessary to compete for attractive programming. In turn, these broadcasters will then become more competitive in their local markets.

In addition New World supports the Commission's proposal to relax the "duopoly" rule. Specifically, New World recommends that the Commission allow a single entity to acquire broadcast television stations with contour overlaps on a first-come, first-served basis until the number of remaining broadcast television entities in

the local market reaches the minimum number of six. Providing broadcast television stations with the capacity to provide multiple channels of programming in the local market would enhance their competitiveness and protect the public interest by ensuring the viability of free, over-the-air television broadcasting in the local market. In addition, New World believes that liberalizing the duopoly rule would not harm the local markets for delivered video programming, advertising, video program production or viewpoint diversity because the growing multichannel marketplace provides numerous outlets and substitutes. These reasons also support the elimination of the television cross-ownership rule.

Finally, New World recommends that the Commission permit TV stations to enter into local marketing agreements ("LMAs"). Certainly LMAs should be permitted in television to the extent that co-ownership of the participating stations would be permissible under the rules as revised by this proceeding. Even if the Commission declines to relax the duopoly rules, the FCC should continue to permit LMAs.

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New World Communications Group Incorporated ("New World"), by its attorneys, hereby submits its comments in the above-captioned proceeding which proposes to re-examine and liberalize the television broadcast multiple ownership rules.

COMMENTS

As a television group owner, New World supports the FCC's Further Notice of Proposed Rule Making ("FNPRM") revisiting the television broadcast multiple ownership rules and policies. Indeed, as we discuss below, the results of the many Commission initiatives to promote competition and diversity have so fundamentally changed the broadcast industry that existing regulations -- adopted for a different market structure at a different time -- now threaten to undermine the very competition and diversity the Commission has been promoting. New World has expended over one billion dollars to acquire and upgrade TV stations and production facilities to create a strong TV station group since entering the broadcast television market in the last two years. New World currently holds 12 full power television broadcast licenses.

Since the Commission's last major change to the multiple ownership rules in 1984, developments in regulatory policy, communications technologies, and services have made the video programming delivery market highly competitive. For example, between 1984 and 1994, the number of TV stations has grown from 1,169 to 1,523;[1] the percentage of households passed by cable has grown from 64% to 96.5%;[2] and three additional broadcast networks have been launched[3] (double the number in existence in 1984).[4] In addition, the Multipoint Multichannel Distribution

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[1] See Broadcast Station Totals of December 31, 1994, FCC Public Notice No. 51785 (January 24, 1995)

[2] In addition, 43.2% of TV households subscribed to cable in 1985. Florence Setzer and Jonathan Levy, Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996, 4044, at Table 15 (Office of Plans of Policy Working Paper No. 26, 1991). It is estimated that 63% of TV households will subscribe to cable television by the end of 1995. Paul Kagan's 10-year Cable TV Industry Projections, Cable TV Investor, May 18, 1994, at 6.

[3] The three post-1984 networks are FOX, United Paramount Network and Warner Brothers.

[4] The three networks in existence in 1984 were CBS, NBC and ABC.

Service ("wireless cable")[5] and direct broadcast satellite ("DBS")[6] deliver multichannel video programming to the home in direct competition to free, over-the-air broadcasts and are gaining penetration. Moreover, several Regional Bell Operating Companies ("RBOCs") are now entering the marketplace to provide video dialtone service, which is expected to rapidly grow into a significant multichannel video competitor in the marketplace, and some are also seeking to obtain authority to construct and operate cable systems. Accordingly, in light of the increasingly competitive marketplace in which broadcasting must now operate, licensees must be released from the Commission's regulatory regime which was appropriate for the market when adopted but is now restraining rather than promoting effective competition.

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[5] Recent multi-million dollar investments in wireless cable businesses by Bell Atlantic and NYNEX into CAI Wireless Systems, Inc. and by Pacific Telesis Group into Cross Country Wireless, Inc. demonstrate the maturation of wireless cable into a bona fide competitor in the multichannel marketplace (as well as the seriousness of the RBOC's commitment to entering the video distribution marketplace). See 61 Telecommunications Rep. No. 13, at 19 (April 3, 1995) ("Telecom Reports") (concerning the CAI Wireless System, Inc. investment) (noting that "providing video programming over CAI's wireless cable systems will let Bell Atlantic and NYNEX secure market share, establish brand identity and gain early entry into markets where they plan to offer video dialtone service"); see also PacTel to Buy Tiny Wireless-Cable Firm for $120 Million to Speed Video Project, Wall St. J., Apr. 18, 1995, at A4 ("Wall Street Journal"). CAI plans to deliver digital wireless cable services to "combine the best qualities of local cable TV with the best qualities of direct broadcast satellite, providing expanded local channel coverage as well as CD quality sound and super video." 61 Telecom Reports at 20. PacTel plans to upgrade Cross Country Wireless's analog systems to digital to enable the delivery of more than 100 channels. Wall Street Journal

[6] DBS delivers "CD" quality sound and digital quality video.

Television is a video distribution business that requires a certain minimum audience reach to make programming successful. Prior to the development of cable, and its attendant effect of increasing the reach of UHF stations, spectrum limitations prevented more than three station groups from achieving the necessary audience penetration.[7] As a result, historically, this minimum scale was achieved by the networks' ability to deliver to producers nationwide coverage through affiliates. The independents meanwhile filled their day with rerun network programming, sports, and syndicated fare offered by a few firms specializing in that business.

As competition from additional stations, cable and other video delivery media grew, the local affiliate found itself in an increasingly difficult situation. Networks reduced the amount of compensation they paid, and program distributors kept a greater share of the revenue through higher fees and greater advertising holdbacks.

New World believes that in a multichannel environment broadcasters still have a vital role as the only provider of local programming such as news, weather, sports and local public affairs. However, to make this enhanced localism commercially feasible, the local broadcaster had to be able to either produce more of its own program or obtain greater revenue from its programming (or both).

Vertically integrating program distribution into program production presents one way to accomplish this task, as the Commission recognized in the

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[7] See Rolla Park, New Television Networks, 6 Bell J. Econ. 607 (1975).

Financial Interest and Syndication Rules ("fyn/syn")[8] and Prime Time Access Rules

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[8] See Tentative Decision and Request for Further Comments, BC Docket No. 82-345, 94 F.C.C. 2d 1019 (1983) (tentatively concluding that the Commission should repeal the financial interest rules and retain modified syndication restrictions, and to sunset any remaining constraints by 1990); Report and Order, 6 FCC Rcd 3094, MM Docket No. 90-162, as modified, Memorandum Opinion and Order, 7 FCC Rcd 345 (1991), vacated in part, Schurz Communications, Inc. v. F.C.C, 982 F.2d 1043 (7th Cir. 1992), Second Report and Order, 8 FCC Rcd 3282, 3303-3310 (1993) ("Second R&O")(finding that repeal of the fyn/syn rules was warranted because of the increased competition facing the networks and the following conditions in the television programming marketplace: (1) the decline in network audience share since the fyn/syn rules were adopted, (2) the increasing demand for television programming created by the emergence of the FOX network, cable networks and the growth of independent television stations, (3) the intense competition among the three established networks for programming, (4) the increasing ability of first-run distribution to be a fully comparable alternative to network distribution, and (5) the increased concentration in the programming production industry); Memorandum Opinion and Order, 8 FCC Rcd 8270 (released October 22, 1993) (addressing issues raised in five petitions for reconsideration of Second R&O); see also Capital Cities/ABC v. F.C.C., 29 F.3d 309 (7th Cir. 1994) (denying petitions for review of the fyn/syn revised rules filed by networks and independent producers); see also Review of the Syndication and Financial Interest Rules, Sections 73.659-73.663, Notice of Proposed Rulemaking, FCC 95-144, MM Docket No. 95-39 (released April 5, 1995) (requesting comment on whether to continue the remaining fyn/syn restrictions before their expiration in November 1995 pursuant to a court order in United States v. NBC, 842 F. Supp. 402 (C.D. Cal. 1993)).

("PTAR")[9] proceedings and as other broadcasters obviously recognized when they created the FOX, Warner Brothers and United Paramount networks.

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[9] The PTAR generally prohibits network-affiliated stations in the top 50 TV markets from broadcasting more than three hours of network or former network ("off-network") programs during the four prime time viewing hours (i.e., 7 to 11 p.m. Eastern and Pacific times; 6 to 10 p.m. Central and Mountain times). 47 C.F.R. § 73.658(k). The Commission established the PTAR in 1970 after concluding that ABC, NBC and CBS dominated the program production market, controlled much of the video fare presented to the public, and inhibited the development of competing program sources. Report and Order, Docket No. 12782, 23 F.C.C. 2d 382, 384 (1970) ("PTAR I"). In PTAR I, the Commission found that between 1957 and 1968, the share of all network evening programs produced or directly controlled by networks rose from 67.2% to 96.7%, while independent producers, which produced approximately one-third of the evening network schedules in 1957, provided less than 4% in 1968. Id. at 385-391. The Commission believed that the PTAR would provide an "opportunity -- now lacking in television -- for competitive development of alternative sources of television programs so that television licensees [could] exercise more than a nominal choice" in selecting programming for their local audiences. Id. at 397. Nevertheless, the Commission's Network Inquiry staff analyzed the effects of the PTAR and recommended its elimination in 1980 after finding that it did not serve the public interest (although the Commission failed to adopt its recommendation). See Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Volume I at 510-513 (1980). Most recently, in the pending PTAR proceeding, the Commission recognizes that the dramatic expansion of competition in the video distribution market since the PTAR was adopted in 1970 requires "an overall review of the need for the [PTAR] rule is now appropriate." See Notice of Proposed Rule Making, MM Docket No. 94-123 at para. 3 (released October 25, 1994) ("PTAR NPRM"). Specifically, the PTAR NPRM cites that the total number of commercial and non-commercial television stations has increased 76% (from 862 in 1970 to 1,520 in September 1994) and the number of commercial independent stations has grown by almost 450% (from 82 in 1970 to over 450 in 1994). PTAR NPRM at para. 17. Further, 65% of television households had access to six or more broadcast channels in 1970, while in 1993 70% of all television households received 11 or more TV broadcast channels. Id. In addition, the PTAR NPRM notes that new video distribution services, including cable, wireless cable, DBS, VCRs and SMATV, have expanded greatly during this period. Id. at para. 18.

On the other hand, from New World's perspective, the traditional network programming plans utilized by the major networks are not designed to provide their affiliates sufficient opportunities to broadcast independently generated programming. Since its switch to Fox, New World has increased the local news and information programming on all of its stations by 100 to 150 percent. Therefore, as a result of such vertical integration and increased scale, New World submits that it will be well positioned to continue to improve the quality of its local news, public affairs and entertainment programming.[10]

The Commission's efforts to enhance program diversity by increasing distribution outlets has made it possible for entities other than the traditional networks to support new program production. However, these new distributors must still face the economic reality that a minimum audience penetration will be necessary before any program producer will assume the risk of creating a new program to be offered in the competitive video market.[11] While this scale can be achieved through *ad hoc*

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[10] Vertically integrated networks are more diverse than either basic or pay cable services. See The Promise Fulfilled? An Empirical Analysis of Program Diversity on Television, 7 J. Media Econ. 51, 61-62 (1994) (noting that "the fledgling FOX Network should be a catalyst for increased diversity in program types offered at the other three networks.").

[11] When FOX went on the air in 1986, it had ninety-nine affiliates with over an 80% audience reach. See Laurie Thomas & Barrie R. Littman, Fox Broadcasting Company, Why Now? An Economic Study of the Rise of the Fourth Broadcast "Network", 35 J. Broadcasting & Electronic Media 139 (1991).

affiliation arrangements, as is done in the syndication market, individual broadcast competitors must assure producers that at least a critical mass of audience reach can be achieved from the outset

Economic theory explains why vertical integration is a superior organizational form to *ad hoc* affiliation when trying to achieve economies of scale.[12] Economies of scale in a network depend on spreading out fixed costs over a large audience. The incentives for an affiliated station, however, diverge from those of the network. The affiliated station, maximizing its profits, will naturally "skim cream" from a new network. That is, it will clear programs from the network only if the expected profit for that program is higher than the expected profit from any syndicated alternative. The affiliate "free rides" by sharing in production costs only for those programs that are immediately successful. Only stations vertically integrated with the network will internalize the long-run benefits of clearing a program.[13]

This economic analysis suggests that the lower the national ownership limit is, the more free rider problems a fledgling network will have to overcome,

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[12] For a complete discussion, see Bruce Owen & Steven Wildman, Video Economics 171 (Harvard University Press, 1992) ("Video Economics").

[13] These benefits include efficiency gains from spreading fixed costs of production over a larger audience. The affiliate does have an incentive to establish a local audience for programs it intends to carry in the future. The affiliate has no incentive, however, to stick with programming in order to establish the reputation of the network.

leading to fewer opportunities for alternative programming. This view is summarized by Owen:

> Free riding is likely to make stations, networks, and viewers all worse off .... These free rider problems could be avoided in principal by vertical integration -- outright ownership of stations by networks. But FCC rules prevent any entity from owning stations reaching more than 25 percent of all television households.[14]

Because of the free rider problem, the network is forced to assume the majority of the risk, while affiliated stations will clearly reap much of the rewards if the network is successful.[15] Thus, by reforming the national ownership rules, New World submits that the Commission can move decisively to improve the viability of new networks, and to promote competition in broadcasting.

Given the preexisting affiliation relationships of many broadcasters with the three largest networks, if the Commission wishes to see the viewing public receive the benefits of the increased distribution potential Commission actions have made possible, it must permit other broadcasters to achieve the audience reach that supports new program production. It is not necessary, and New World believes it is probably not possible or desirable to achieve this minimum scale by creating permanent, full time networks. Instead, a more flexible arrangement, along the lines of a hybrid of

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[14] Video Economics 171.

[15] See generally Stanley M. Besen & Ronald Soligo, The Economics of the Network-Affiliate Relationship in the Television Broadcasting Industry, 63 Am. Econ. Rev. 259 (1973).

the Fox network and first-run syndication will become a more frequent structure. Even in this case, however, the economic requirement of an assured minimum audience will still be a pre-condition to making the risks of commissioning new programming acceptable. The Commission can take an important step in facilitating the process by permitting group owners (whether by merging, forming joint ventures or individually) to reach a greater percentage of that minimum necessary audience by themselves.[16] The proposals under consideration do that and, for those reasons, New World strongly supports eliminating the ownership cap and increasing the audience penetration limit.

I. The Commission's Proposal to Relax the National Broadcast Television Ownership Rules Is Long Overdue

The FNPRM requests comment on the proceeding's 1992 proposal to raise the national ownership limits for TV broadcast stations from the current 12 or maximum 25% aggregate national audience reach to a higher limit of 18, 20 or 24 stations combined with an increased audience reach cap of 30% or 35%. In addition, the FNPRM includes a proposal to relax the national ownership rule by eliminating the numerical station limit and incrementally increasing the aggregate audience reach up from 25% to a limit of at least 50%.[17] New World supports the FNPRM's new

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[16] <u>See</u> note 20, <u>infra</u>.

[17] FNPRM at paras. 81-100. The current limits are increased to 14 stations and 30% if two or more of the stations are controlled by minorities.

proposal generally, but recommends that the Commission adopt a single rule change to increase the maximum national audience reach cap to at least 50% and eliminate any ownership restrictions on the number of attributable stations or outlets.

The national ownership rules were adopted "(1) to encourage diversity of ownership in order to foster the expression of varied viewpoints and programming, and (2) to safeguard against undue concentration of market power."[18] As discussed further below, New World supports eliminating the numerical station limit in favor of a relaxed national audience reach cap because it captures the characteristic of broadcasters determining their financial standing (i.e., the total audience potentially available) and allows TV broadcasters flexibility to own either a few stations serving large population markets or a larger number of stations serving small population markets without harming the Commission's viewpoint diversity goals.[19] As a result, the FNPRM's proposal would provide all TV broadcast licensees with the same opportunity to reach an equal share of the national audience.

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[18] Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Gen. Docket No. 83-1009, Report and Order, 100 F.C.C. 2d 17, 18 (1984) (relaxing the TV ownership cap from seven stations to 12 because "the nature and scope of broadcasting in the United States has experienced an enormous transformation [between 1954, when the seven-station cap was adopted, and 1984]."

[19] New World supports the Commission's proposal to determine the aggregate national audience reach based on the sum of a single broadcast owner's households within its attributable stations' Designated Market Areas ("DMA") divided by the total nation's households.

For example, New World is among several broadcasters that own 11 or 12 TV stations but serve a substantially smaller percentage of the national audience than broadcasters owning less than 10 TV stations.[20] This data demonstrates that the existing 12 station ownership cap merely serves to inhibit smaller broadcasters and new market entrants from achieving the necessary "critical mass" of national audience reach to fairly compete with the established incumbents. In addition, eliminating this numerical limit would remove the efficiency disadvantages under which small and mid-sized market station groups operate and thereby improve the quality of programming available in those markets.

Moreover, New World submits that the unrealistically low 25% audience reach cap is premised on the myth that the single most important measure of a licensee's market power is the size of its audience.[21] In fact, the characteristics of a station's demographics are nearly as important to advertisers as its audience reach.[22]

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[20] New World owns 12 TV stations but only serves 14.4% of the national audience; Pulitzer Publishing Co. owns 12 stations but only serves 5.49% of the national audience; Better Communications, Inc. owns 11 TV stations but only serves 4.62% of the national audience; the Providence Journal Broadcasting Corporation owns 11 stations but only serves 5.62% of the national audience. By contrast, NBC owns 6 stations and serves 19.19% of the national audience; Tribune Broadcasting owns only 8 stations and serves 24.11% of the national audience; FOX owns 8 stations and serves 23.8% of the national audience; and ABC owns 8 stations and serves 23.72% of the national audience.

[21] See Video Economics 3-4.

[22] Id; see also, Jon Lafayette, Richmond Station Drops News For 'Jenny Jones', Electronic Media, May 1, 1995, at 8 (regarding a TV station's decision to replace the 5 p.m. local newscast with a talk show). Although both the station and its chief

For example, broadcast TV's multichannel competitors are free to establish outlets narrowly dedicated to the avocations of the young, affluent or well-educated for the purpose of reaching specific demographics (e.g., MTV and VH-1). In this manner, such specialized outlets are able to attract substantial advertising dollars that would otherwise go to group station owners with large national audience shares. Therefore, New World submits that the 25% audience cap is no longer rationally related to the Commission's competition and diversity goals in the increasingly competitive multichannel video distribution market.

New World does not support the Commission's 1992 proposal to relax the national audience cap from 25% to 30% (or 35%) Lifting the national ceiling to only 30% would still restrict small station group owners from achieving the necessary scale to become successful program originators.[23] In today's market, unless a

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competitor shared a 14 Nielson Television Index rating (percentage of TV homes) and a 24 share (percentage of sets in use), the programming switch was necessary because the competitor "had young people [and the station] had old people."

[23] Given the data of station ownership outlined in note 20, supra, and the reluctance of broadcasters to sell "cornerstone" stations in markets with a 2% or more national audience reach (markets one through six), merely lifting the national audience to 30% instead of 50% would only benefit the five broadcasters with an audience reach close to 20% or more (CBS, NBC, ABC, Tribune Broadcasting and FOX) because they could reach the 30% cap by acquiring smaller market stations (which are more readily available for acquisition). By contrast, mid-sized broadcasters would have great difficulty taking advantage of the cap without pursuing strategic options with similarly-sized broadcasters, and a 30% cap would not provide them with sufficient flexibility to pursue such ventures and thereby achieve the economies necessary to remain competitive. For example, a 30% ceiling would restrict a group with a 10% market share from merging with another group near the existing 25% ceiling. Therefore, the Commission must lift the audience reach cap to 50% to

program producer is willing to take a substantial loss on its production costs, a new program needs access to approximately 70% of the television households to pay for itself. Thus, increasing the audience cap to merely 30 or 35% will not provide group owners who want to originate new programming any real benefits. Lifting the audience reach cap to at least 50% would, on the other hand, allow broadcast stations to come closer to achieving the economies necessary to remain competitive with multichannel media such as cable, wireless cable, DBS and video dialtone that are not subject to similar regulatory restraints.

Further, the proposal to increase the audience reach cap incrementally from 25% over a period of years is without support in the marketplace. Such a plan would impose artificial restrictions on business decisions that have no policy benefits. The Commission should recognize that an incremental transition from a market where regulation of ownership restricts individual companies' decisions to one largely free of these restrictions is likely to create more dislocations in the industry than New World's proposed one-time change to at least a 50% audience reach cap. New World submits that incremental changes to the 25% cap would diminish individual broadcaster competitiveness and trap certain mid-sized companies in uneconomic positions because they would be too big to join with a comparably sized company (i.e., another company serving mid-sized markets) but too small to grow to the size of the networks by themselves.

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adequately promote competition and increase diversity in the video distribution market.

An incremental increase in the national ownership rule could have other unintended consequences. The capital markets force many companies to impose high discount rates on themselves. As a result, the transition phase in which the national ownership rules are gradually increased could be overemphasized by corporate planners relative to what is socially optimal. This factor could lead to strategic plans, including acquisitions and new product development, which are optimal during the transition phase, but which lead to a sub-optimal long-run equilibrium. This consequence is particularly likely to be true if the transition phase is protracted and if changes in corporate strategy are costly.[24]

A. Loosening the National Ownership Restrictions Will Strengthen the Market for Delivered Video Programming

New World supports the FNPRM's conclusion that liberalizing the national ownership rules will not harm the essentially "local" video programming market.[25] For the reasons discussed above, the local video programming market will be *enhanced* by relaxing the national ownership rules. The Commission, therefore, should measure the concentration in the delivered video programming market by the

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[24] This is a simple consequence of the fact that high discount rates weight the near term more highly than lower discount rates. Costly changes in corporate strategy mean that a profit maximizing firm may not fully adjust to new conditions after having optimized its planning for the transition phase. For a discussion of corporate planning, see Richard A. Brealey and Stewart C. Meyers, Principles of Corporate Finance chs. 6, 10, 28 (McGraw Hill, 1991).

[25] See FNPRM at para. 83.

number of available outlets or channels of delivered video programming rather than the number of television broadcast stations because this measure would more accurately reflect the true range of the substitutable choices available.

Moving to a market definition which accounts for all channels of video programming is also more consistent with empirical findings on the substitutability of different media. Congress and the FCC has already recognized competition between broadcast and cable television through its "effective competition" standard for cable regulation.[26] Also, work by Mayo and Otsuka shows that the presence of a multipoint distribution system (MDS) in a local area significantly reduces cable rates.[27] Moving to a broader definition of the market for video programming is needed to account for current technological realities.

The Commission has already taken action to increase the number of outlets.[28] Now the Commission should take action to promote the likelihood that each outlet will be able to offer diverse programming. This policy would serve the

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[26] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, §§ 2, 3, 9, 14, 106 Stat. 1460 (1992) (Cable Act of 1992); Rate Regulation, Report and Order, 8 FCC Rcd 5631, 5648 (1993).

[27] See generally John W. Mayo & Yasuji Otsuka, Demand, Pricing, and Regulation: Evidence from the Cable TV Industry, 22 Rand J. Econ. 396 (1991).

[28] See generally 47 C.F.R. § 76.1 (1994) (outlining scope of rules and regulations governing cable television systems), 47 C.F.R. § 100.1 (1994) (promulgating rules governing development of Direct Broadcast Satellite service), and 47 C.F.R. § 21.903 (1994) (indicating purpose of and permissible service authorized for Multipoint Multichannel Distribution service).

Commission's role of promoting First Amendment interests and competition. When this market is examined by considering all the available outlets of delivered video programming, it is clear that there is sufficient substitutability to loosen the national ownership rules.[29] Accordingly, New World not only agrees with the Commission that loosening the national ownership cap would not adversely affect the video programming delivery market, but submits that such action would strengthen the local video programming market.

B. The Market for Advertising Will Be Bolstered If the National Ownership Rules Are Relaxed

New World supports the Commission's conclusion that in light of the multiple substitutes for national advertising (e.g., other broadcast television stations, cable operators, radio operators, newspapers), relaxing national ownership limits will not have a harmful effect on the *national* advertising market.[30] By establishing a marketplace that promotes more competitive broadcasters, the Commission helps the national advertising market by increasing the distribution channels available. If more competition exists, then programmers target different demographic groups more

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[29] See, e.g., LIVE Draws Flak Over Its 'Stargate' Ad for TV Show, Shelf Talk,™ Billboard, Apr. 8, 1995, at 101 (describing controversy generated in video rental industry by one company's decision to include a promotion for a program appearing on network television because it allegedly drew "renters away from video stores to watch network television programming").

[30] See FNPRM at para. 86 (noting that because the primary providers of national advertising, commercial broadcast networks, commercial cable networks and syndicators, already reach this market, it is unlikely that relaxing the national ownership rules would have harmful effects).

effectively (as FOX has done with younger viewers). These channels will be more efficient at reaching audiences the advertisers are trying to reach.

In addition, because of a significant number of available substitutes in the *local* market for advertising (e.g., other broadcast stations, cable operators, radio operators, newspapers). New World submits that merely providing a licensee the flexibility to expand its national reach would not provide it with the market power necessary to charge unduly high rates to local advertisers. This contention is supported by the facts. Empirical work has shown that the presence of a group owned station in a local market has no significant effect on station profitability.[31] This implies that group membership has no affect on a station's market power. Other work has shown that the presence of a group owned station in a market has no effect on advertising prices.[32] While group ownership has no harmful effects on competition for advertising in the local market, the increasing number of viable outlets with different geographic coverages provides advertisers with a variety of substitutable media to purchase in the local market.

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[31] See generally Gary M. Fournier, The Determinants of Economic Rents in Television Broadcasting, 1986 Antitrust Bull. 1045 (1986).

[32] See generally J. L. Peterman, Concentration of Control and the Price of Television Times, 61 Am. Econ. Rev. 74 (1971).

C. Liberalizing the National Ownership Rules Will Promote the Video Production Market

The FNPRM suggests that relaxing the national ownership limits would not cause any significant economic harm to the video production market.[33] This view is based in part on the Commission's finding that the application of the Herfindahl-Hirshman Index ("HHI") (a common measure of market concentration) to this market results in a very low number (121) by antitrust standards, demonstrating that the current limits could be liberalized substantially before any competitive concerns would arise.[34] Further, the FNPRM notes that the evidence supports the notion that group owned stations lack market power in the purchase of programming.[35] Indeed, New World submits that raising the national ownership limits would promote production in the video market by increasing the number of effectively competitive distribution channels available and the possible parties able to commission or support the origination of new programming.

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[33] Id. at para. 89-91

[34] Id. at para. 91; see also Cable Networks And Content Providers Boosted by DBS and Promise of Telcos, 15 Comm. Daily No. 66, at 8 (Apr. 6, 1995) (noting that "new technologies and distribution systems are good news for virtually all content providers, panelists said at Northern Schroeder/Variety conference in N.Y.C. Tues.").

[35] Id. at para. 92

D. <u>Relaxation of the National Ownership Rules Will Benefit Diversity in Programming</u>

The FNPRM states that television and competing outlets are viewed locally and questions whether an increase in concentration nationally would affect diversity on the local level.[36] New World contends that eliminating the numerical limits and increasing the national audience cap to at least 50% would *increase* diversity in programming. As a result of the increase in the number of stations it owns, New World has greater flexibility to produce and broadcast more varied entertainment as well as local news and public affairs programming.[37] This commitment to local news and public affairs programming includes providing New World's stations the autonomy to editorialize and to allow the local managers to make independent editorial and reporting decisions. Based on its experience, New World submits that liberalizing the national ownership rule will increase the diversity of viewpoints at the local level.

In addition, New World submits that the increase in available programming channels in today's evolving multichannel marketplace will also serve to ensure the diversity of programming under a more relaxed national ownership rule. As the number of programmers targeting a mass audience increases, additional

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[36] <u>Id</u>. at para. 95-97.

[37] Research has shown that group owned stations program substantially more news (24.5 minutes per week, significant at the five percent level) than non-group stations. <u>See</u> Harvey J. Levin, <u>Fact and Fancy in Television Regulation</u> 169 table 6.2 (Russell Sage Foundation, 1980).

programmers will find it more profitable to "counter-program" to diverse, minority, or niche audiences than to further divide the "mainstream" (i.e., least common denominator) mass market audience.

The basic economic framework for analyzing diversity is provided by the program choice model of Peter Steiner.[38] In Steiner's model, broadcasters decide how to maximize their viewing audience given known viewer preferences for different program formats. When viewer preferences are such that there is one group whose tastes dominate other fringe groups, audience maximizing broadcasters choose to wastefully duplicate the dominant format before any fringe formats are offered. Jack Beebe later clarified the Steiner analysis by showing that the lack of diversity was caused by exogenously imposed channel limitations in the model. (Meaning that the maximum number of channels was artificially set by the author.) If additional channels could be added for a given fixed cost, then the socially optimal level of programming variety would be offered.[39]

This analysis suggests that the high fixed cost associated with programming high-quality original alternatives to major network fare is the major obstacle to diversity. The only way for local broadcasters to surmount these fixed

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[38] See generally Peter Steiner, Program Patterns and Preferences and the Workability of Competition in Radio Broadcasting. 66 Q.J. Econ. 194 (1952).

[39] See generally Jack Beebe, Institutional Structure and Program Choices in Television Markets. 91 Q.J. Econ. 15 (1977).